



EMPLOYMENT TRIBUNALS

Claimant: Mr S Bates

Respondent: Kentas of London Ltd (in voluntary liquidation)

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

The Tribunal makes a protective award in favour of the claimant and orders the respondent to pay remuneration for a protected period of 90 days beginning on 31 July 2020.

REASONS

1. No response has been entered by the Respondent. Judgment is not automatically entered in favour of a claimant just because a respondent does not reply. I am satisfied that I have sufficient information and evidence to make a decision without a hearing.
2. On 31 July 2020, the Respondent dismissed 26 employees by reason of redundancy. The company then went into liquidation. There was no consultation of any description with any representatives of the employees (or even with the employees). There were no recognised unions and no elections were held for employee representatives.
3. The Claimant was an affected employee and he was one of those dismissed. By virtue of section 189(1)(a) of the Trade Union and Labour Relations (Consolidation) Act 1992, the Claimant has standing to bring a claim for a breach of section 188A of that Act. The Respondent has completely failed to comply with any part of the requirements of sections 188 and 188A. The maximum protective award is therefore appropriate.

Employment Judge **Quill**

Date: 11 November 2021

Case No: 3311871/2020

JUDGMENT SENT TO THE PARTIES ON

AND ENTERED IN THE REGISTER

6 December 2021

FOR THE TRIBUNAL OFFICE

**ANNEX TO THE JUDGMENT
(PROTECTIVE AWARDS)**

Recoupment of Benefits

The following particulars are given pursuant to the Employment Protection (Recoupment of Benefits) Regulations 1996, SI 1996 No 2349.

The respondent is under a duty to give the Secretary of State the following information in writing: (a) the name, address and National Insurance number of every employee to whom the protective award relates; and (b) the date of termination (or proposed termination) of the employment of each such employee.

That information shall be given within 10 days, commencing on the day on which the Tribunal announced its judgment at the hearing. If the Tribunal did not announce its judgment at the hearing, the information shall be given within the period of 10 days, commencing on the day on which the relevant judgment was sent to the parties. In any case in which it is not reasonably practicable for the respondent to do so within those times, then the information shall be given as soon as reasonably practicable thereafter.

No part of the remuneration due to an employee under the protective award is payable until either (a) the Secretary of State has served a notice (called a Recoupment Notice) on the respondent to pay the whole or part thereof to the Secretary of State or (b) the Secretary of State has notified the respondent in writing that no such notice is to be served.

This is without prejudice to the right of an employee to present a complaint to an Employment Tribunal of the employer's failure to pay remuneration under a protective award.

If the Secretary of State has served a Recoupment Notice on the respondent, the sum claimed in the Recoupment Notice in relation to each employee will be whichever is the less of:

- (a) the amount (less any tax or social security contributions which fall to be deducted by the employer) accrued due to the employee in respect of so much of the protected period as falls before the date on which the Secretary of State receives from the employer the information referred to above; OR
- (b) (i) the amount paid by way of or paid as on account of jobseeker's allowance, income-related employment and support allowance or income support to the employee for any period which coincides with any part of the protected period falling before the date described in (a) above; or
- (ii) in the case of an employee entitled to an award of universal credit for any period ("the UC period") which coincides with any part of the period to which the prescribed element is attributable, any amount paid by way of or on account of universal credit for the UC period that would not have been paid if the person's earned income for that period was the same as immediately before the period to which the prescribed element is attributable.

The sum claimed in the Recoupment Notice will be payable forthwith to the Secretary of State. The balance of the remuneration under the protective award is then payable to the employee, subject to the deduction of any tax or social security contributions.

A Recoupment Notice must be served within the period of 21 days after the Secretary of State has received from the respondent the above-mentioned information required to be given by the respondent to the Secretary of State or as soon as practicable thereafter.

After paying the balance of the remuneration (less tax and social security contributions) to the employee, the respondent will not be further liable to the employee. However, the sum claimed in a Recoupment Notice is due from the respondent as a debt to the Secretary of State, whatever may have been paid to the employee, and regardless of any dispute between the employee and the Secretary of State as to the amount specified in the Recoupment Notice.